

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

|                                  |   |                           |
|----------------------------------|---|---------------------------|
| <b>UNITED STATES OF AMERICA,</b> | ) | <b>CASE NO. 8:02CR164</b> |
|                                  | ) |                           |
| <b>Plaintiff,</b>                | ) |                           |
|                                  | ) |                           |
| <b>vs.</b>                       | ) | <b>ORDER</b>              |
|                                  | ) |                           |
| <b>YAMIL RIVERA-KADER,</b>       | ) |                           |
|                                  | ) |                           |
| <b>Defendant.</b>                | ) |                           |

This matter is before the Court on the Defendant's pro se motion to compel the government to file a motion under Federal Rule of Criminal Procedure 35 (Filing No. 574).

The plea agreement provides:

Any cooperation provided by you will be considered by the United States Attorney, or [her] designate, under Sentencing Guideline § 5K1.1, and/or, separately, under Title 18 U.S.C. § 3553(e), and/or, separately, under Federal Rule of Criminal Procedure 35(b). The United States Attorney, or [her] designate, in his or her sole discretion, will determine whether and to what extent any such motions should be filed. . . . [Y]ou knowingly and voluntarily waive any right which you may have to challenge the government's decision not to file or seek a downward departure pursuant to . . . Rule 35(b), except upon a substantial threshold shown by you that any such decision was based upon an unconstitutional motive related to your race, religion, gender, or national origin, or except upon an appropriate showing of a violation of your Sixth Amendment Right to Counsel.

(Filing No. 487, ¶ 4.)

The Defendant has not made the substantial showing required to allow him to challenge the absence of a Rule 35 motion.

IT IS ORDERED:

1. The Defendant's pro se motion to compel the government to file a motion under Federal Rule of Criminal Procedure 35 (Filing No. 574) is denied; and

2. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

DATED this 7<sup>th</sup> day of July, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge